IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
and
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

H.C.P.No.812 of 2006

Arumugam @ Pambu Arumugam ... Petitioner

Vs.

1.The Secretary to the Government,
Prohibition and Excise Dept.,
Secretariat, Chennai 600 009.

2.The Commissioner of Police,
Greater Chennai. ... Respondents

Petition filed under Article 226 of the Constitution of India for the issue of a writ of Habeas Corpus to call for the records in connection with the order of detention passed by the 2nd Respondent dated 20.7.2006 in Memo. No.141/BDFGISV/2006, against the petitioner's Arumugam alias Pambu Arumugam, son of Marimuthu, aged about 32 years, who is confined at Central Prison, Chennai and set aside the same and direct the respondents to produce the detenu before this Honourable Court and set him at liberty.

For petitioner : Mr. V. Parthiban

For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner, by name, Arumugam @ Pambu Arumugam, who was detained as a "Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 20.07.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, the learned counsel for the petitioner, by drawing our attention to the remand order which is available at page 191 of the paper book showing that requisition was made for remand in respect of ground case in Crime No.1020/2006 on the file of H-8 Thiruvotriyur Police Station and also in Crime No.1016/2006 of the same police station (last adverse case) and that remand was also ordered in both the crime numbers, contended that the detaining authority should have shown his awareness in respect of both the crime numbers while considering the imminent possibility of the detenu coming out on bail, but it is not so, as found in para-4 of the grounds of detention and hence, the detention order is vitiated.

4. In the light of the above contention, we verified the remand order available at page 191 of the paper book. It is true that in the requisition given by the sponsoring authority, a reference was made in respect of ground case as well as last adverse case. It is equally true that by order dated 13.7.2006, learned Judicial Magistrate, Thiruvotriyur, after recording the presence of the accused, two in number, as well as the fact that no complaint was made against the police, remanded both the accused till 27.7.2006 in crime Nos.1020/2006 and 1016/2006. Hence, it is clear that the detenu was remanded in both the crime numbers.

5. Now, let us consider the question of subjective satisfaction and awareness of the detaining authority, as found in para-4 of the grounds of detention. The detaining authority after noting that the detenu Arumugam @ Pambu Arumugam was in remand in crime No.1020/2006 of H-8 Thiruvotriyur Police Station and that he did not move any bail application, came to the conclusion that there is a real possibility of the detenu coming out on bail by filing bail application before the same Court or higher Court and in that event, he will indulge in further activities which will be prejudicial to the maintenance of public order. It is true, as pointed out by the learned counsel for the petitioner; the detaining authority has not shown his awareness in respect of remand in crime No.1016/2006. However, as rightly pointed out by the learned Additional Public Prosecutor, inasmuch as the detaining authority has taken note of the remand in ground case, viz., crime No.1020/2006 which relates to the offences under sections 341, 336, 427, 397 and 506(2) IPC against the last adverse case in crime No.1016/2006 relating to the offence under section 379 IPC, the detaining authority cannot be faulted with. It is not in dispute that in the last adverse case in crime No.1016/2006 the offence involved is one under section 379 IPC, whereas in the ground case in crime No.1020/2006, among other offences, the offence under section 397 IPC, which is greater in nature, is also there.

6. In this regard, it is useful to refer the decision of Division Bench of this Court dated 16.4.2002 in HCP No.1713 of 2001. It was argued

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before the Division Bench that non-consideration of imminent possibility of the detenu filing bail application and coming out on bail will lead to the irrefutable conclusion that the detaining authority has not properly applied his mind and hence, the detention is vitiated on the ground of non-application of mind on the part of detaining authority. Rejecting the said contention, the Division Bench has concluded that,

> "4. In the grounds of detention, while forming the subjective satisfaction as to the imminent possibility of the petitioner, in filing a bail application and coming out on bail, the detaining authority has taken note of the ground case, which is more graver in nature namely under Section 302 of IPC than the adverse case which are all of lesser offences.
> 5. It is well settled in law that it will be sufficient for the detaining authority to form the subjective satisfaction as to the imminent possibility of the petitioner coming out on bail by filing a bail application only in respect of the ground case and non-consideration of such imminent possibility as to the adverse case will not vitiate the order of detention.
> 6. Admittedly, the detaining authority has taken note of the nature of the offences in ground case, which is more graver in nature under Section 302 IPC, to form the subjective satisfaction that there is imminent possibility of the petitioner, filing a bail application. In our considered view, such subjective satisfaction arrived by the detaining authority would be sufficient to sustain the order of detention, even when there is no reference to the adverse case while forming such an opinion by the detaining authority. "

7. Inasmuch as the detaining authority has taken note of the ground case in which an offence of greater nature, viz., offence under section 397 IPC, is involved, to form subjective satisfaction that there is imminent possibility of the detenu filing bail application and coming out on bail, as observed by the Division Bench, the subjective satisfaction arrived at by the detaining authority would be sufficient to sustain the order of detention. We have already referred to the factual details in respect of ground case as well as the last adverse case. Considering the fact that the ground case relates to offences including a greater offence and the same has been rightly taken note of by the detaining authority, as evident in para-4 of the grounds of detention, we are unable to accept the first contention raised by the learned counsel for the petitioner.

8. No doubt, the learned counsel for the petitioner relied on the decision of Division Bench of this Court dated 28.09.2004 in H.C.P.No.638

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of 2004. However, considering the factual position in the case on hand, we are of the view that the said decision is not helpful to the detenu.

9. Referring to the representation of the detenu dated 18.8.2006 which was considered and rejected on 31.8.2006, the learned counsel for the petitioner next contended that though there is no delay in the disposal of representation, the reply of the Government dated 31.8.2006 shows non-application of mind in the disposal of representation. In support of the above contention, learned counsel has brought to our notice the reply dated 31.8.2006 wherein at the end, while rejecting the representation, the Government has stated that the complaints made in the representation are acceptable. On the other hand, the learned Additional Public Prosecutor has placed before us the files which contain the original order passed by the Secretary, Prohibition and Excise Department, Chennai wherein it is correctly mentioned that the complaints made in the representation are unacceptable and liable to be rejected. In view of the same, we are of the view that there is a typographical error in the last part of order dated 31.8.2006 communicated to the detenu and we are satisfied that the detenu is not prejudiced in any way. Accordingly, we reject the above contention also.

In the light of what is stated above, we do not find any merit in the petition and accordingly, the H.C.P. fails and the same is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1.The Secretary to the Government,
Prohibition and Excise Dept.,
Secretariat, Chennai 600 009.
2.The Commissioner of Police,
Greater Chennai.
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison, Chennai.

HCP.No.812 of 2006
Dated:17.10.2006

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